



Judgment

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO.419 OF 2009

Baban s/o Kisan Ingle (**Dead**),
aged about : 49 years,
r/o Lonar, taluka Lonar,
district : Buldhana.

Through LR:

Smt.Laxmi wd/o Baban Ingle,
aged about 42 years,
occupation : household,
r/o room No.120, Police Head
Karanja square, Buldhana,
district Buldhana.

..... **Appellant.**

:: V E R S U S ::

State of Maharashtra,
through Police Station Officer,
Buldhana,
district : Buldhana.

..... **Respondent.**

=====
Shri Atharva Manohar, Counsel for the Appellant.
Mrs.Sneha Dhote, Additional Public Prosecutor for
the Respondent/State.
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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 25/09/2024
PRONOUNCED ON : 09/10/2024

JUDGMENT

1. By this appeal, the appellant (the accused) has
challenged judgment and order dated 10.8.2009 passed

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by learned Additional Sessions Judge, Special Judge, Buldana (learned Judge of the special court), in Special Anti Corruption Case No.1/2001.

2. By the said judgment impugned, the accused is convicted for offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 and sentenced to undergo simple imprisonment for two years and to pay fine Rs.1000/-, in default, to undergo simple imprisonment for six months.

3. Brief facts of the prosecution case are as under:

4. Keshav Namdeo Sangale, a resident of Sangale, taluka Lonar, district Buldana, lodged a written report with the Lonar Police Station on 25.8.2000 alleging that Sakharam Kedar had committed theft of axle of his bullock cart worth of Rs.700/-. The investigation of the said written report was handed over to the accused. It is alleged that the accused called Ashok Sakharam and Sakharam Kedar in the police station through Police Patil. Accordingly Ashok Sakharam, Sakharam, Ramesh, and

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Bajirao Jaybhaye and others visited the Lonar Police Station. The accused took them in back side of room of the police station and by giving threats of taking Ashok Kedar and Sakharam Kedar in police custody, demanded Rs.200/- for Keshav and Rs.2000/- for himself for not obtaining police custody remand and not arresting them. Ashok Kedar gave Rs.200/- for paying it to Keshav and assured the accused to pay Rs.2000/- within two three days and, thereafter, Ashok approached his maternal uncle Shripatrao Jaybhaye and disclosed facts to him and requested to pay him Rs.2000/- for giving it to the accused. Ashok along with his maternal uncle Shripatrao came at the Lonar Police Station and met the accused. The accused demanded amount Rs.2000/- from them and, therefore, maternal uncle Shripatrao gave Rs.1000/- to Sakharam for giving it to the accused. As Ashok was not inclined to pay the amount to the accused, he approached the office of the Anti Corruption Bureau at Buldhana and lodged a complaint.

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5. After receipt of the complaint, officials of the bureau called two panchas. The complaint was read over to panchas and they verified contents of the complaint. The complainant produced ten currencies of Rs.100/- before officers of the bureau. The demonstration as to phenolphthalein powder and sodium carbonate was shown to the complainant and panchas. After applying the said solution, the amount was kept in right side of shirt pocket of the complainant. The complainant was instructed not to hand over the amount unless there is a demand and also asked to give a signal on acceptance of the amount. Pancha No.1 was also instructed to remain with the complainant and observe events. Pancha No.2 was instructed to remain with raiding party members. Accordingly, pre-trap panchanama was drawn.

6. The complainant and pancha No.1 Anantrao Dhoran went to the police station to see the accused. After some time, the complainant and pancha No.1 came and informed raiding party that the accused is coming within a short time in hotel and they were asked to go to

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hotel. The accused came out of the police station and went in the hotel and enquired about the amount. The complainant handed over the same. Accordingly, the complainant had given a signal and the accused was caught. The amount was recovered from the accused. The hand wash of the accused as well as the complainant was collected. The pant of the accused was also verified by sprinkling the solution. After completing procedure of post-trap panchanama, the complaint was lodged by the trap officer on the basis of which, the crime was registered. During investigation, the investigating officer sent investigation papers to the sanctioning authority for according a sanction. Seized muddemal was sent for chemical analysis. After completion of the investigation, a chargesheet was submitted against the accused.

7. To substantiate allegations, the prosecution examined as many as six witnesses namely Anantrao Dhoran vide Exhibit-32 (PW1), the Shadow Pancha; Ashok Kedar vide Exhibit-37 (PW2), the complainant;

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Sakharam Kedar vide Exhibit-49 (PW3), the father of the complainant; Shripat Jaybhaye vide Exhibit-51 (PW4), maternal uncle of the complainant; Ranjit Sahay vide Exhibit-59 (PW5), the Sanctioning Authority; and Devidas Mahale vide Exhibit-70 (PW6), the Trap Officer.

8. Besides the oral evidence, the prosecution relied upon complaint Exhibit-33, pre-trap panchanama Exhibit-34, seizure memos Exhibits-43 to 45, post-trap panchanama Exhibit-47, sanction order Exhibit-60, map Exhibit-46, house search panchanama of the accused Exhibit-48, and Chemical Analyzer's Report Exhibit-76.

9. After considering the evidence adduced during the trial, learned Judge of the Special Court held the accused guilty as the aforesaid.

10. Heard learned counsel Shri Atharva Manohar for the accused and learned Additional Public Prosecutor Mrs.Sneha Dhote for the State. I have been taken through the entire evidence so also the judgment impugned in the appeal.

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11. Learned counsel for the accused submitted that learned Judge of the Special Court erroneously convicted the accused in absence of any corroborative evidence as to the demand and acceptance of the alleged gratification as it is not proved. The demand and acceptance of illegal gratification is *sine qua non* for attracting provisions of the said Act. He submitted that recital of the complaint shows that villagers namely Ramesh Bajirao were present when the demand was made. None of them is examined by the prosecution. There are material contradictions which affect the prosecution case. The tainted notes are not forwarded to the Chemical Analyzer. Though the investigating officer and pancha witness stated that solution was sprinkled on notes, no stains are found on the said notes. The aspect of the demand and acceptance is not proved. Mere recovery of the amount from the accused that by itself is not sufficient to hold him guilty. A draft sanction order was sent to Sanctioning Authority PW5 Ranjit Sahay and on the basis of the draft sanction order, the sanction was

accorded. Thus, the entire prosecution case fails as the sanction was accorded without application of mind.

12. In support of his contentions, learned counsel for the accused placed reliance on following decisions:

1. Shrikant Tukaram Borade vs. State of Maharashtra¹;

2. Khilli Ram vs. State of Rajasthan²;

3. Manohar Ravan Kamble vs. State of Maharashtra³;

4. Kuldeep s/o Thauraji Kale and anr vs. The State of Maharashtra⁴;

5. Mohan Bhaiyyalal Shrivastava vs. The State of Maharashtra⁵, and

6. Ramesh Tukaram Waghmare vs. State of Maharashtra⁶.

13. Per contra, learned Additional Public Prosecutor for the State submitted that not only the evidence of complainant PW2 Ashok Kedar is corroborated by

1 2010 SCC OnLine Bom 2355

2 (1985)1 SCC 28

3 2011 Scc OnLine Bom 2108

4 Criminal Appeal No.99/2010 decided by this court on 8.3.2024

5 Criminal Appeal No.265/2005 decided by this court on 4.9.2023, and

6 Criminal Appeal No.148/2006 decided by this court on 22.1.2024

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Shadow Pancha PW1 Anantrao Dhoran but also it is corroborated by father of the complainant PW3 Sakharam Kedar and maternal uncle of the complainant PW4 Shripat Jaybhaye. The amount was recovered from the accused. The solution collected after the acceptance was sent to the Chemical Analyzer and the Chemical Analyzer's Report shows that the solution has contents of phenolphthalein powder and sodium carbonate. As far as the sanction is concerned, the evidence of Sanctioning Authority PW5 Ranjit Sahay shows that it is after application of mind. Thus, the prosecution has proved the demand as well as acceptance and, therefore, no interference is called for in the judgment impugned in the appeal.

14. Since question of validity of the sanction has been raised as a primary point, an aspect of sanction requires to be discussed. The sanction order was challenged on ground that it was not accorded after application of mind.

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15. In order to prove the sanction order, the prosecution placed reliance on the evidence of Sanctioning Authority PW5 Ranjit Sahay, who testified that at the relevant time, he was working as Superintendent of Police at Buldana from 11.4.2001 to 2.6.2023. The Superintendent of Police is competent authority to dismiss or remove persons from services who are police officers upto cadre of Assistant Sub Inspector. Police Head Constables come within that category. His evidence further shows that he received investigation papers in respect of Crime No.3049/2000. The accused was serving at the Lonar Police Station. He studied papers received by him carefully and cautiously and came to a conclusion that sanction is to be accorded. He referred the prosecution case and deposed that the accused gave assurance to complainant PW2 Ashok Kedar to settle the matter and demanded the amount. The enquiry regarding the theft of axle was with the accused. The accused has to submit his report regarding the enquiry of the complaint, but he has not

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submitted the report and demanded gratification amount. On his satisfaction, he accorded the sanction. During his cross examination, it brought on record that contents of the sanction order and the draft sanction order are the same. In further cross examination, it revealed that the accused demanded the amount and accepted the same and, therefore, he accorded the sanction.

16. Undisputedly, the accused was serving as the Police Head Constable. The enquiry of the theft case was allotted to the accused.

17. Recital of the sanction order further shows that the entire prosecution case was introduced and it was specifically mentioned in the sanction order that after application of mind, Sanctioning Authority PW5 Ranjit Sahay satisfied himself and accorded the sanction.

18. Thus, the evidence on record and the sanction order show that after evaluating the material,

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Sanctioning Authority PW5 Ranjit Sahay accorded the sanction.

19. Whether sanction is valid or not and when sanction can be called as valid, the same is settled by various decisions of the Hon'ble Apex Court as well as this court.

20. The Hon'ble Apex in the case of **Mohd.Iqbal Ahmad vs. State of Andhra Pradesh**⁷ held that what the court has to see is whether or not the Sanctioning Authority at the time of giving the sanction was aware of the facts constituting the offence and applied its mind for the same and any subsequent fact coming into existence after the resolution had been passed is wholly irrelevant. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions and must therefore be strictly complied with before any prosecution can be launched against the public servant concerned.

7 1979 AIR 677

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21. In view of the settled principles of law, it is crystal clear that the Sanctioning Authority has to apply his/her own independent mind for generation of his/her satisfaction for sanction. The sanction order should speak for itself. It is well settled that sanction order should not be so elaborate like an order of court containing detailed reasons, but it should be after application of mind. Ultimately, an object of grant of sanction should be able to consider evidence and material before it and the Sanctioning Authority shall come to a conclusion that whether the prosecution in the circumstances be permitted or forbidden. It is further well settled that sanction is solemn and sacrosanct act. The law does not require sanction to be in a particular form. The sanction should be given in respect of facts constituting offence charged equally which applies to the sanction under Section 19 of the said Act.

22. As observed earlier, sanction order is not required to be passed as of a court order.

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23. In the light of the above well settled legal position, if the sanction order is perused, Sanctioning Authority PW5 Ranjit Sahay, after perusal of the record and application of mind, accorded the sanction.

24. Thus, the issue of sanction cannot be put at such pedestal as it would make impossible for the prosecution to prove the same. The object and purpose of grant of sanction and protection contemplated thereby does not mean that technical and trivial objections to legality and validity of sanction to be entertained. When all relevant materials placed before the Sanctioning Authority are found to be taken into consideration in correct perspective, the sanction accorded is by application of mind.

25. The sanction accorded in the present case is after application of mind and, therefore, the submission of learned counsel for the accused, that the sanction is not according to law, is not sustainable and liable to be discarded.

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26. Besides the issue of the sanction, the prosecution claimed that the accused demanded the gratification amount and accepted the same. In order to prove the demand and acceptance, the prosecution placed reliance on the evidence of Shadow Pancha PW1 Anantrao Dhoran and complainant PW2 Ashok Kedar. As to the previous demand, the prosecution placed reliance on the evidence of father of the complainant PW3 Sakharam Kedar and maternal uncle of the complainant PW4 Shripat Jaybhaye.

27. On the question of the demand and acceptance, if the evidence of complainant PW2 Ashok Kedar is perused, it would show that he testified that he had purchased an axle of bullock cart from Lonar for Rs.150/-. However, Keshav and his brother Madhukar informed him that axle attached to his bullock cart is owned by them and they lodged a theft case against him. On 11.9.2000, Police Patil Ganesh Sangle informed him that he is called by the accused at the Police Station. On the next day, he along his father Sakharam, one Ramesh and Bajirao went

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to the police station. In their presence, the accused, by taking him and his father at back side of the police station, threatened them and demanded Rs.2000/- for settlement. The accused demanded Rs.200/- for giving it to Keshav. Amount Rs.200/- was immediately given by complainant PW2 Ashok Kedar, which was given to Keshav by the accused. He assured the accused to pay Rs.2000/- within 2-3 days. On 13.9.2000, he obtained amount from his maternal uncle and visited the police station along with the maternal uncle. In presence of his maternal uncle also, the demand was made. As he was not willing to pay the amount, he approached the office of the bureau and lodged the report. He also narrated about various events took place during the pre-trap panchanama. As to the demand on the day of the trap, he testified that he along with Shadow Pancha PW1 Anantrao Dhoran visited the police station, communicated with the accused, the accused asked him to wait in the hotel, and he along with the said pancha went in the hotel. After some time, the accused came

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there and demanded the amount. As the accused agreed to take the amount in two installments, he handed over amount of Rs.1000/- by his right hand and the accused kept it in his pant pocket. Thereafter, he gave a signal and the accused was caught. The amount was recovered from the accused. The hand wash of the accused so also the complainant was obtained.

28. To corroborate the aspect of the demand and acceptance on the day of the trap, the prosecution examined Shadow Pancha PW1 Anantrao Dhoran and pancha No.2, who also testified that as per directions of their superior, they attended the office of the bureau whereat they were introduced with complainant PW2 Ashok Kedar. The complainant narrated the incident, which they verified from the complaint. They also narrated about various events including the demonstration as to phenolphthalein powder and sodium carbonate and accordingly, pre-trap panchanama was drawn.

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As to the demand and acceptance, the evidence of the Shadow Pancha is that he along with the complainant went to the police station. During communication, the accused asked them for ten minutes and they went at a tea stall whereat the accused demanded the amount and accepted same. The accused was caught by officers of the bureau. He was enquired by officers of the bureau as to communication between the complainant and the accused. He narrated as to the demand and acceptance. The amount was recovered from the accused. The hand wash of the accused was also obtained.

29. Shadow Pancha PW1 Anantrao Dhoran and complainant PW2 Ashok Kedar were cross examined.

Insofar as the cross examination of complainant PW2 Ashok Kedar is concerned, it revealed that previously he was knowing the accused. He admitted that an offence was registered against his father at Lonar Police Station for outraging modesty of a woman. As far as presence of other witnesses is concerned, he stated

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that Ramesh Sangle is his maternal uncle and Kisan Kedar, Maruti Sangle, Vijay Sangle, and Nimbaji Sangle are from his village. He denied that Ramesh met him and his father when they went at Lonar. One omission is brought on record that he has not stated before the trap officer that Ramesh and Bajirao were with him when they went to the Lonar Police Station. It came in the cross examination that in first room, where they met the accused, there was no talk about the money. The evidence further shows that Ramesh and Bajirao came at back side room after the talk regarding demand of money was over.

Thus, his cross examination shows that money was demanded when these two persons Ramesh and Bajirao were not present.

He further admitted that he has not stated before the trap officer while making statement that the accused had told that he would require to take PCR in presence of his maternal uncle. He has also not stated that his

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maternal uncle had given him Rs.1000/- for giving it to the accused.

These omissions are proved by the accused through the cross examination of the trap officer.

The cross examination further shows that on the day of the trap, when the demand was made, except the Shadow Pancha, none was present in the room. The cross examination further shows that the accused asked him whether the amount is brought.

Thus, the cross examination also shows that when initial demand was made, Ramesh and Bajirao were not along with the complainant. At the time of the demand on the day of the trap, only the shadow pancha was present. It is specifically brought during the cross examination that the accused asked him whether the amount is brought.

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30. Whether there is corroboration or not to the evidence of complainant PW2 Ashok Kedar, the same is to be seen.

31. As to the demand and acceptance, the evidence of Shadow Pancha PW1 Anantrao Dhoran is consistent with the evidence of complainant PW2 Ashok Kedar, who testified that in his presence, the accused has asked whether the money is brought and the complainant handed over amount Rs.1000/- and informed that remaining amount Rs.1000/- he would pay within 2-3 days. Insofar as the cross examination of the Shadow Pancha is concerned, it reveals that nothing incriminating is brought on record to shatter his evidence.

32. Father of the complainant PW3 Sakharam Kedar and maternal uncle of the complainant PW4 Shripat Jaybhaye, are witnesses on the previous demand.

It is categorically stated in the evidence of complainant PW2 Ashok Kedar that after receipt of the information that he is called by the accused, he along

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with his father went at the police station. He specifically stated that the accused had taken him and his father at back side of room and demanded the amount. The cross examination of the complainant also shows that Ramesh and Bajirao, who were present in the police station, came at the back side of room when the talk, regarding payment of money, was over.

Thus, not only the chief examination but also the cross examination shows that at the relevant time, when the demand was made on 12.9.2000, only the father of the complainant was present along with him.

The father of the complainant also deposed that when he visited along with his son at the police station, the accused demanded Rs.2000/-. His cross examination shows he has no occasion to tell the police that the accused has taken him and his son in another room. One portion mark "A" is brought on record.

The maternal uncle of the complainant, was present with the complainant when the complainant

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visited the police station on the next day. His evidence also shows that in his presence, the accused made a demand from the complainant and the complainant obtained Rs.1000/- from him.

33. Trap Officer PW6 Devidas Mahale, has narrated about procedure carried out by him during pre-trap and post-trap panchanamas. Admittedly, he is not eyewitness as to the demand and acceptance, but he is the witness to show that the amount was recovered from the accused.

The cross examination of the trap officer also shows that complainant PW2 Ashok Kedar and his father PW3 Sakharam Kedar had gone to the police on 12.9.2000 after receiving message on 10.9.2000. The cross examination further shows that talks of demand took place in presence of Sakharam.

Thus, the cross examination of the Trap Officer also shows that Sakharam was present when the earlier demand was made. As far as contradiction, brought on

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record during the cross examination of Sakharam, is concerned, the same was put and proved through the investigating officer.

34. It is vehemently submitted by learned counsel for the accused that though independent witnesses were present, they are not examined in whose presence the demand was made.

If the said submission is appreciated, in the light of the evidence, not only the chief examination but also the cross examination of complainant PW2 Ashok Kedar and the evidence of father of the complainant PW3 Sakharam Kedar shows that except the complainant and Sakharam, no other person was present when the demand was made.

Thus, the demand was made in the presence of father of the complainant PW3 Sakharam Kedar on 12.9.2000 and maternal uncle of the complainant PW4 Shripat Jaybhaye on 14.9.2000 and, therefore, the contention of learned counsel for the accused that there

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is no corroboration to the aspect of the demand is not sustainable for the reason that the demand was made in presence of Sakharam and Shripat, who were examined and they corroborated version of the complainant.

35. It is well settled that besides the direct evidence, demand and acceptance can be proved on the basis of circumstantial evidence.

36. The Constitution Bench of the Hon'ble Apex Court in the case of **Neeraj Dutta vs. State (Govt. of NCT of Delhi)**⁸ held that for recording conviction under Sections 7 and 13 (1)(d)(i) (ii) of the said Act, the prosecution has to prove the demand and acceptance of illegal gratification either by direct evidence which can be in the nature of oral or documentary evidence or by circumstantial evidence in the absence of direct or oral evidence. It further held that under Section 7 of the said Act in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an

⁸ 2023 4 SCC 731

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offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13(1) (d) and (i) and (ii) of the said Act.

37. It is well settled that offences under the said Act relating to public servants taking bribe require demand of illegal gratification and acceptance thereof. The proof of demand of bribe by public servants and its acceptance by him is *sine qua non* for establishing offences under the said Act.

38. The Hon'ble Apex Court in the case of **K.Shanthamma vs. The State of Telangana**⁹ referring the judgment in the case of **P.Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and anr**¹⁰ held that the proof of demand of bribe by a public servant and its acceptance by him is sine quo non for establishing the offence

⁹ 2022 LiveLaw (SC) 192

¹⁰ (2015)10 SCC 152

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under Section 7 of the said Act. The failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offences under Sections 7 and 13 of the said Act would not entail his conviction thereunder. The Hon'ble Apex Court has reproduced paragraph No.23 of its decision in the case of **P.Satyanarayana Murthy** *supra*, which reads thus:

“The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction”.

39. To prove the offence under Sections 7 and 13(1)(d) of the said Act, following are ingredients of the said Sections, which require to be prove:

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under Section 7: (1) the accused must be a public servant or expecting to be a public servant; (2) he should accept or obtain or agrees to accept or attempts to obtain from any person; (3) for himself or for any other person; (4) any gratification other than legal remuneration, and (5) as a motive or reward for doing or forbearing to do any official act or to show any favour or disfavour.

under Section 13(1)(d): (1) the accused must be a public servant; (2) by corrupt or illegal means, obtains for himself or any other person any valuable thing or pecuniary advantage; or or by abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; (3) to make out an offence under Section 13(1)(d), there is no

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requirement that the valuable thing or pecuniary advantage should have been received as a motive or reward; (4) an agreement to accept or an attempt to obtain does not fall within Section 13(1)(d); (5) mere acceptance of any valuable thing or pecuniary advantage is not an offence under this provision; (6) to make out an offence under this provision, there has to be actual obtainment, and (7) since the legislature has used two different expressions namely “obtains” or “accepts”, the difference between these two have to be taken into consideration.

40. The Constitution Bench of the Hon’ble Apex Court in the case of **Neeraj Dutta vs. State (Govt. of NCT of Delhi)** *supra* held that in order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence. The

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Hon'ble Apex Court, while discussing expression "accept", referred the judgment in the case of **Subhash Parbat Sonvane vs. State of Gujarat**¹¹ observed that mere acceptance of money without there being any other evidence would not be sufficient for convicting the accused under Section 13(1)(d)(i). In Section and 13(1) and (b) of the said Act, the Legislature has specifically used the words 'accepts' or 'obtains'. As against this, there is departure in the language used in clause (1)(d) of Section 13 and it has omitted the word 'accepts' and has emphasized the word 'obtains'. In sub clauses (i) and (ii) (iii) of Section 13(1)(d), the emphasize is on the word "obtains". Therefore, there must be evidence on record that accused 'obtained' for himself or for any other person any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or he obtained for any person any valuable thing or pecuniary advantage without any public interest.

¹¹ (2002)5 SCC 86

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41. While discussing the expression “accept”, the Hon’ble Apex Court observed that “accepts” means to take or receive with “consenting mind”. The ‘consent’ can be established not only by leading evidence of prior agreement but also from the circumstances surrounding the transaction itself without proof of such prior agreement. If an acquaintance of a public servant in expectation and with the hope that in future, if need be, he would be able to get some official favour from him, voluntarily offers any gratification and if the public servant willingly takes or receives such gratification it would certainly amount to ‘acceptance’ and, therefore, it cannot be said that as an abstract proposition of law, that without a prior demand there cannot be ‘acceptance’. The position will however, be different so far as an offence under Section 5(1)(d) read with Section 5(2) of the 1947 Act is concerned. Under the said Sections, the prosecution has to prove that the accused ‘obtained’ the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise

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abusing his position as a public servant and that too without the aid of the statutory presumption under Section 4(1) of the 1947 Act as it is available only in respect of offences under Section 5(1)(a) and (b) and not under Section 5(1)(c), (d) or (e) of the 1947 Act. According to this court, 'obtain' means to secure or gain (something) as the result of request or effort. In case of obtainment the initiative vests in the person who receives and in that context a demand or request from him will be a primary requisite for an offence under Section 5(1)(d) of the 1947 Act unlike an offence under Section 161 of the Indian Penal Code, which can be established by proof of either 'acceptance' or 'obtainment'.

42. Learned counsel for the accused placed reliance on the decision of **Shrikant Tukaram Borade** *supra* wherein it is held by this court that the complainant in his evidence has stated that he invited the accused to take tea at a public place and ordered three cups of tea, when it was decided that he would offer bribe to the

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accused in his office. There was thus no reason for the complainant to change the place of making payment and it was not his case that the accused had chosen to accept the bribe in public place.

43. Facts in the present case are quite different as the accused asked Shadow Pancha PW1 Anantrao Dhoran and complainant PW2 Ashok Kedar and offered have a tea in the hotel and asked them to go outside and, thereafter, took them in a hotel. Thus, it was the accused who had chosen the place to accept the amount and, therefore, observations in **Shrikant Tukaram Borade** *supra* are not helpful to the present case.

44. Learned counsel for the accused also placed reliance on the decision of the Hon'ble Apex Court in the case of **Khilli Ram** *supra* wherein it has been observed that the police station was not far away and if the accused wanted actually to receive the bribe, he would try to chose a better environment for it than the one where the bribe is said to have been given.

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In the present case also, facts are not identical as the accused himself has chosen the place and, therefore, observations are not helpful to the accused.

45. Learned counsel for the accused placed reliance on decisions of this court in cases of **Kuldeep s/o Thauraji Kale and anr** *supra* and **Mohan Bhaiyyalal Shrivastava** *supra* wherein aspect of corroboration was considered by referring the decision in the case of **Panalal Damodar Rathi vs. State of Maharashtra**¹² wherein it is held that there could be no doubt that the evidence of the complainant should be corroborated in material particulars. After introduction of Section 165-A of the Indian Penal Code making the person who offers bribe guilty of abetment of bribery, the complainant cannot be placed on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon.

¹² (1979) 4 SCC 526

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46. Here, in the present case, the prosecution examined father of the complainant PW3 Sakharam Kedar and maternal uncle of the complainant PW4 Shripat Jaybhaye. Not only the evidence of complainant PW2 Ashok Kedar but also the evidence of Trap Officer PW6 Devidas Mahale states about the presence of Sakharam along with the complainant. Thus, the corroboration by Sakharam as to the demand is present in the present case. The consistent evidence of the complainant as to the demand is corroborated by Sakharam as well as Shripat.

47. It is submitted by learned counsel for the accused that though the evidence shows that Ramesh and one Bajirao were present in the police station, the cross examination of complainant PW2 Ashok Kedar specifically states that they came at back side of room when talk regarding the demand of money was over. Thus, they were not witnesses on the previous demand and, therefore, their non examination is not fatal to the prosecution.

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48. The evidence of complainant PW2 Ashok Kedar and Shadow Pancha PW1 Anantrao Dhoran sufficiently shows that there was a demand and in pursuance of the said demand, the amount was accepted. The aspect of previous demand was also corroborated by the oral evidence of father of the complainant PW3 Sakharam Kedar and maternal uncle of the complainant PW4 Shripat Jaybhaye.

49. The evidence of Sanctioning Authority PW5 Ranjit Sahay shows that complaint filed by one Keshav alleging theft of bullock cart axle was handed over to the accused for interrogation. Thus, the work as to the enquiry regarding the theft by the complainant was pending with the accused and, therefore, there was reason for the accused to demand the amount and accept the same.

50. The evidence of Shadow Pancha PW1 Anantrao Dhoran and Trap Officer PW6 Devidas Mahale shows that the demand was made and the amount was recovered from the accused. The Chemical Analyzer's Reports

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show that hand wash of the accused and hand wash of complainant PW2 Ashok Kedar and full pant of the accused were referred for chemical analysis and phenolphthalein powder and sodium carbonate were detected on the same articles. Though learned counsel for the accused submitted that tainted notes were not sent for Chemical Analysis and, therefore, the prosecution case affects, the Chemical Analyzer's Reports show contents of phenolphthalein powder and sodium carbonate on the pant pocket of the accused wherein he has kept the amount, which is sufficient to show involvement of the accused in the alleged offence.

51. Thus, the evidence as to the demand and acceptance is consistent and corroborative and, therefore, there is no hesitation to hold that the demand and acceptance is proved.

52. Insofar as the defence of the accused of total denial is concerned and cross examination which fails to rebut the presumption, the Hon'ble Apex Court, in the

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case of **C.M.Girish Babu vs. CBI Cochi, High of Kerala¹³**, held that it is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. It is further held that it is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. It is further held that it is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the

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prosecution to prove the case beyond a reasonable doubt.

53. In the case in hand, a condition precedent to draw such legal presumption, that the accused has demanded the amount and accepted the same, has been proved and established. The evidence of Trap Officer PW6 Devidas Mahale shows that after acceptance of the amount, the hand wash of the accused was collected and sent for chemical analysis and the Chemical Analyzer's Report shows contents of the phenolphthalein powder and sodium carbonate, which sufficiently show involvement of the accused.

54. Thus, in the present case, a primary condition for acting on the legal presumption, that the prosecution should have proved that whatever received by accused was gratification, is proved by the prosecution. A fact is said to be proved when its existence is directly established or when upon the material before it the Court finds its existence to be so probable that a

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reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted. Learned Judge of the Special Court has rightly considered the same and convicted and sentenced the accused. The sanction accorded is also after application of mind and, therefore, no interference is called for.

55. In the light of the above, the appeal is devoid of merits and liable to be dismissed and the same is **dismissed**.

Appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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